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Proceedings

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promise that you can be fair and impartial both
to the defendant and to the People in this case.

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So with that in mind, if anyone has
an emergency or compelling reason that they can
not serve on this jury or if based on what I
just described to you about this case, you feel
you might not be a fair and impartial juror or
feel uncomfortable being a juror in this case,
in other words, you do not wish to accept the
responsibility of being a juror in a criminal
case based on what I have just told to you, you
will be discharged from this Court.

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PROSPECTIVE JUROR: I have tickets to
go away.

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THE COURT: Very well. That would be
one of your reasons. You don't have to show
proof. Your word is good enough for me. You
are honest people.

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(Whereupon prospective jurors leaving
courtroom.)

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THE CLERK: You ladies can step down,
please, and find seats in the audience.

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THE COURT: Thank you.

(Whereupon prospective jurors

Proceedings

complying.)

THE COURT: Now I remain standing for another reason.

Mr. Avitable, would you swear the panel.

THE CLERK: Would the entire panel please stand and raise your right hands.

THE COURT: Mr. Avitable will administer the oath.

THE CLERK: Excuse me, Ma'am, are you with the panel?

LADY: No.

THE CLERK: Do each of you solemnly swear to truthfully answer all questions regarding your qualifications to serve as trial jurors on this case, so help you God?

PROSPECTIVE JURORS: Yes.

THE CLERK: Please be seated.

THE COURT: Please be seated everyone.

Ladies and gentlemen of the jury panel, as I just indicated, this trial is the case of the People of the State of New York against Mr. Lamar Whitehead. You have been called as possible jurors for this trial.

1 Proceedings

2 Before I begin, please let me note
3 the following. Service as a juror is a vital
4 function of citizenship under our American
5 System of Justice. Is I am sure you are aware,
6 the right to a trial by jury separates our
7 country from many many less fortunate others and
8 that right should be jealously guarded.

9 Beside being a traditional part of
10 our American history, jury service carries a
11 very great and important responsibility. That
12 is to accord both a defendant and the People,
13 the accused and the accuser a fair trial.

14 To help ensure this, our first order
15 of business is to conduct an oral examination of
16 you, our prospective jurors. This part of the
17 trial is called Voir Dire, and that is a more
18 legal French term. The literally translation is
19 to see, to speak but it is an idiomatic
20 expression actually, which translates to speak
21 the truth.

22 Voir dire is the jury selection
23 process, the method by which twelve of you will
24 be chosen as jurors and a number of other as
25 alternates. First, however, I would like to

Proceedings

1
2 explain briefly what the trial will involve and
3 the roles of the Judge and the Jury. And after
4 that I will begin to ask you some questions.

5 Please understand that I will be
6 directing my remarks to all prospective jurors.
7 A number of you will shortly be seated in the
8 jury box. I ask all of you to pay close
9 attention to the questions that I will ask later
10 because if and when any of you who are seated
11 where you are now, are outside of the rail, as
12 we call it, are called to sit up here in the
13 jury box, I will need to know your answers to
14 these general questions.

15 Also, if anyone has any trouble
16 hearing my remarks or my questions, please let
17 me know and I will be happy to repeat myself.

18 Let me emphasize that everyone who
19 serves on a criminal trial jury accepts the
20 serious responsibility of ensuring that the
21 defendant and the People will have a fair trial.

22 In order to fulfill the
23 responsibility each juror must be free from any
24 feelings or attitude of prejudice, sympathy or
25 preconceived notions that might interfere with

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Proceedings

his or her ability to be impartial and thus to render a fair and just verdict based solely on the evidence in this case.

As to the questions, some are designed or asked so as to reveal such feelings or attitudes both conscious and unconscious. Later, besides my questions, you may be questioned by the attorneys. And please do not be offended by any of these questions. I remind you, you were just sworn to tell the truth. You will answer them honestly, and I know you will, in fairness to yourself and the parties in this case.

As I indicated, the trial which is about to begin is a criminal action against the defendant, Lamar Whitehead.

I will now refer you to the formal indictment.

Count one read as follows.

The defendant, Lamar Whitehead, is accused of the crime of Scheme to Defraud in the First Degree, allegedly, committed as follow.

The defendant, Lamar Whitehead, on or about and between September of two thousand and

Proceedings

four through March of two thousand and five, in Suffolk County, allegedly engaged in a scheme constituting a systematic ongoing course of conduct with the intent to defraud more than one person or to obtain property from more than one person by false or fraudulent pretenses, representations or promises, and so obtains property with a value in excess of one thousand dollars from one or more such persons, to wit: The defendant, using the identity of various Suffolk County residents, obtained or attempted to obtain car loans from E-Loan Corporation and others in excess of one thousand dollars.

Count two charges the defendant with Identity Theft in the First Degree, and so do counts three, four, seven, eight, nine, and counts eleven through fifteen, and counts seventeen through thirty-seven.

I will read you count two.

The defendant, Lamar Whitehead, is accused of the crime of Identity Theft in the First Degree, allegedly, committed as follows.

The defendant, Lamar Whitehead, on or about February 15, year two thousand and five,

Proceedings

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2 assumed the identity of a Maria Marcarle or
3 Marcarle, a Suffolk County resident, by using
4 the personal identifying information of that
5 person, and obtained goods, money, property or
6 services, having a value of more than two
7 thousand dollars.

8 Count eleven and fifteen are similar
9 to count two. The difference being the names of
10 the alleged victims and the alleged dates of the
11 crimes.

12 Count three charges the defendant,
13 Mr. Lamar Whitehead, with the crime of Identity
14 Theft in the First Degree under a different
15 subdivision of law, allegedly committed as
16 follows.

17 The defendant, Lamar Whitehead, on or
18 about February 15, year two thousand and five,
19 assumed the identity of Maria Marcarle, a
20 Suffolk County resident, by using the personal
21 identifying information of that person and
22 committed or attempted to commit a Class D
23 Felony or a higher level crime.

24 This is also charged in count four,
25 seven, eight, nine, twelve, thirteen, fourteen,

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Proceedings

sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, thirty-two, thirty-three, and thirty-four of the indictment.

Once again, the difference being the names of the alleged victims and the alleged dates of the crime.

Count five of the indictment charges the defendant, Mr. Lamar Whitehead of the crime of Identity Theft in the Third Degree, allegedly committed as follows.

The defendant, Lamar Whitehead, on or about March 25, in the year two thousand and five, assumed the identity of Maria Marcarle, a Suffolk County resident, by using the personal identifying information of that person, and obtained goods, money, property or services.

Under count six and sixteen of the indictment, the defendant is also charged with the crimes of Identity Theft in the Third Degree. Once again, the difference being the names of the alleged victims and the alleged

Proceedings

dates of the crimes.

Count ten of the indictment before the Court charges the defendant with the crime of Attempted Grand Larceny in the Second Degree allegedly committed as follows.

The defendant, Mr. Lamar Whitehead, on or about October 14, year two thousand and four, within the jurisdiction of Suffolk County, New York, attempted to steal property from Land Rover of Massapequa, specifically a motor vehicle with a value that exceeded fifty thousand dollars.

These charges are contained in the indictment that I just read to you partially and referred to.

That indictment is only an accusation. An indictment is proof of nothing. You have heard the expression where there is smoke there is fire. An indictment is not even smoke because although smoke may be evidence of a fire, an indictment is not evidence at all and thus, may not be considered as such.

The reason for this is that an indictment is nothing more than the legal form

1 Proceedings

2 by which the State of New York brings to trial
3 the individual it claims has violated the law.

4 The indictment is neither evidence
5 nor proof of the defendant's guilt. Indeed the
6 defendant is presumed to be innocent and this
7 presumption of innocence continues throughout
8 the trial unless and until a jury having
9 considered all of the evidence unanimously finds
10 that a defendant is guilty beyond a reasonable
11 doubt of the charges made against that
12 defendant.

13 Accordingly, the mere fact that there
14 are thirty-four counts or charges in the
15 indictment is of no significance nor may you
16 assign it any significance.

17 This trial is the process by which
18 those of you selected as the jury determine if
19 the State has proved the charges against the
20 defendant by sufficient evidence.

21 In that process, those of you who are
22 selected as jurors and I as the Judge, perform
23 separate functions. You the jury are the
24 exclusive judges of the facts in this case.
25 During the trial counsel may suggest that you

Proceedings

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2 draw certain conclusions but you and you alone
3 evaluate the testimony and exhibits and
4 determine their truthfulness, significance and
5 meaning. You alone decide what truly happened.
6 You alone decide if the evidence establishes the
7 defendant's guilt of the charges beyond a
8 reasonable doubt.

9 Your ultimate decision is the
10 verdict. You may find the defendant either
11 guilty or not guilty of all of the charges or
12 some of the charges.

13 The fact that this action is brought
14 in the the name of the People of the State of
15 New York or that a public offender presents the
16 evidence does not in any way indicate that the
17 public wants a specific verdict. The People of
18 the State are served by whatever verdict the
19 evidence justifies.

20 I as the Judge will make no
21 determination about the defendant's guilt or
22 lack of guilt. My function is to ensure that
23 you reach your verdict in accordance with the
24 law. As part of that function, at the end of
25 the trial, after you have heard all of the

Proceedings

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2 evidence, I will instruct you fully on the law
3 that applies in this case and just as you are
4 the exclusive judges of the facts, I am the
5 exclusive Judge of the law. You must accept the
6 law as I state it to you and apply it to the
7 facts as you find them.

8 During the trial I may rule on
9 questions concerning the conduct of the trial or
10 what evidence you may see or hear. In making
11 these rulings I also am applying the law. I am
12 not evaluating the facts or indicating anything
13 about the defendant's guilt or non-guilt.

14 During the trial the attorneys and I
15 may also hold brief conferences outside of your
16 hearing. These are called side-bar conferences
17 and involve questions of law about which you
18 need not and must not be concerned.

19 Now for the reason you are here
20 today, jury selection, as I indicated, during
21 this portion of the trial the jury selection
22 process, the attorneys and I will ask you
23 certain questions. And as I told you earlier,
24 the purpose of these questions is to elicit
25 information concerning your ability to be

Proceedings

impartial in this case.

Let me also emphasize to you that the purpose of this questioning is not to embarrass you or to discover any personal details of your lives. The purpose is simply to determine whether or not you are qualified to sit as a juror in this particular case.

I advise you that if there is anything you are asked by me or the attorneys which would be embarrassing or uncomfortable for you to answer, merely ask to answer that question or questions privately and you will be invited into the jury room to speak with counsel and myself.

I also ask you please do not take offense of any of the questions that I ask. They are essential to ensure that the People and the defendant receive a fair trial.

I also must advise you, in every jury trial a number of prospective jurors are always excused. I can tell you now before even knowing anything about any of you, that a number of you will not be selected. This is very common. Some of you will not be selected because the

Proceedings

prosecution has a right to for cause, that is referred to as cause, that is as a matter of law you should not sit on this prospective jury. And also excuse a certain amount of jurors called a peremptory challenge, for which no reason is to be stated. Do not be upset if you are excused peremptorily or for cause, it is not anything on your integrity, patriotism or capacity to serve as a juror. It merely reflects the opinion of one of the parties which that person has a right by law to act upon, that you should not sit as a juror in this particular case.

At this time I will ask Mr. Avitable, our courtroom clerk, to select eighteen names and be so kind as to follow the officers' directions.

Mr. Avitable.

THE CLERK: When your name is called, please take all of your belongings, have a seat in the jury box at the direction of the officers.

Prospective juror number one, Lavern Price, P-R-I-C-E.

1 Proceedings

2 Prospective juror number two, Botya
3 McKinley, M-C-K-I-N-L-E-Y.

4 Prospective juror number three, Leon
5 Brown, B-R-O-W-N.

6 Prospective juror number four,
7 Matthew Martino, M-A-R-T-I-N-O.

8 Prospective juror number five, Robert
9 Cecere, C-E-C-E-R-E.

10 Prospective juror number six,
11 Virginia Barrington, B-A-R-R-I-N-G-T-O-N.

12 Prospective juror number seven,
13 Maryanne Lester, L-E-S-T-E-R.

14 Prospective juror number eight,
15 MaryBeth Roehrig, R-O --

16 MR. KEAHON: I am sorry, R-O --

17 THE CLERK: R-O-E-H-R-I-G.

18 Prospective juror number nine,
19 Christopher Fuller, F-U-L-L-E-R.

20 Prospective juror number ten, Felicia
21 Crawford, C-R-A-W-F-O-R-D.

22 Prospective juror number eleven,
23 Leona Desner, D-E-S-N-E-R.

24 Prospective juror number twelve,
25 Katie Werner, W-E-R-N-E-R.

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Proceedings

THE COURT: No, we are off.

COURT OFFICER: Oh, he is standing.

THE COURT: I am sorry, I didn't see
you back there.

THE CLERK: Prospective juror number
thirteen, Samantha Campbell, C-A-M-P-B-E-L-L.

Prospective juror number fourteen,
Laura Palmer, P-A-L-M-E-R.

Prospective juror number fifteen,
John Riordan, R-I-O-R-D-A-N.

Prospective juror number sixteen,
Karen Tommasino, T-O-M-M-A-S-I-N-O.

Prospective juror number seventeen,
James Moir, M-O-I-R.

Prospective juror number eighteen,
James Porciello, P-O-R-C-I-E-L-L-O.

THE COURT: Thank you.
If you would show it to counsel,
please.

THE CLERK: (Complying.)

MR. KEAHON: I am fine, thank you.

THE COURT: Thank you again. Thank
you all.

I am now going to ask you, our first

1 Proceedings

2 eighteen people a number of questions which call
3 for a simple yes or no answer.

4 Again, those of you on the other side
5 of the rail should listen also because you may
6 be asked the same questions shortly.

7 As to any question, if your answer is
8 no, you may remain silent. I will consider
9 silence a no answer. But if your answer is yes,
10 please say yes loud and raise your hand. And if
11 you do not understand any questions, please feel
12 free to say so and I will be free to say so.

13 The defendant in this case is
14 Mr. Lamar Whitehead.

15 Mr. Whitehead, would you please stand
16 so the prospective jurors can see you.

17 Mr. Whitehead is represented by
18 Mr. William Keahon.

19 MR. KEAHON: Good afternoon.

20 THE COURT: The People are
21 represented by the District Attorney in this
22 county, Mr. Thomas Spota by Mr. Raphael Pearl
23 and Miss Jodi Franzese, Assistant District
24 Attorneys, will be presenting the case in this
25 trial.

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Proceedings

Members of the panel, does anyone have any difficulty seeing or hearing or does anyone have any trouble understanding English?

Do any of you know the defendant or any of the attorneys personally or recognize their names?

The following people may be called as witnesses in this case. Please note, however, that my mere mentioning these names does not impose any burden on either side to call any of these people as witnesses.

A Georgia Fortune or Fortune, spelled F-O-R-T-U-N-E.

A representative from the company E-Loan, cap E-L-O-A-N.

A representative from Chase named Mr. Kenneth Scales or another person from Chase.

A representative from Capital One Auto Finance Group, Mr. Kevin Lee.

A Kelly Thomas, a representative of the Internet Bank.

A Mr. Henry Waite, spelled W-A-I-T-E, from Commerce Bank.

An M & T Bank representative named

Proceedings

James Eriksen.

A Mr. Robert O'Shinsky spelled
O'-S-H-I-N-S-K-Y.

A Police Officer, Frank Gallagher.

A Mr. Rocco Gargano.

A Detective Thad Todd, T-H-A-D, first
name, T-O-D-D last name.

Probation Officer Maureen Trenk
spelled T-R-E-N-K.

A Detective Thomas Gabrielle or
Gabrielle spelled G-A-B-R-I-E-L-L-E.

A Detective Gary Miller. A Detective
Gary Jensen. A Detective Michael Connolley. A
Detective Friberg spelled F-R-I-B-E-R-G.

A Senior Evidence Specialist Karen
Ensalada, spelled E-N-S-A-L-A-D-A. A Forensic
Handwriting Analyst Jeffrey or Jeff Luber.

Mr. Ronald Richardson. A Mr. Michael
Redmond. Miss Anita Bryant. Miss Valerie
Rodriguez. A Mr. Nigel Defreitas, spelled
D-E-F-R-E-I-T-A-S. A Maria Marcarle or
Marcarle, spelled M-A-R-C-A-R-L-E. A Mr. Brian
Foley. A Miss Brenda Foley. A Mr. Eric Besso.
A Miss Nerina Sperl, first name spelled

Proceedings

N-E-R-I-N-A, last name spelled S-P-E-R-L. An or
Mr. Nauri Khabeih, spelled N-A-U-R-I,
K-H-A-B-E-I-H. A Mr. Joseph Sweeney. A
Mr. Woyciek Wachnik, also pronounced Woyciek,
spelled W-O-Y-C-I-E-K, last name spelled
W-A-C-H-N-I-K. A Briton Lawlor, first name
spelled B-R-I-T-O-N, last name L-A-W-L-O-R. An,
I believe it is a Brian Smith. A Michael Nolan.
A Raymond Sperl. A Gloria Conaty, spelled
C-O-N-A-T-Y. A Gerald Thurman. A Rhonda
Gassabian, spelled G-A-S-S-A-B-I-A-N. A David
Riddenour, spelled R-I-D-D-E-N-O-U-R. A Brenda
Riddenour. A Kathleen F. March. A Thomas C.
Palladino. A Michael G. Tricarico. Tricarico,
spelled T-R-I-C-A-R-I-C-O. A representative
from SPRINT/NEXTEL Records. A custodian from
that company, this case indicated is a Aymie
Cantor. A Sam Valentine. A custodian from the
company Yahoo, a records custodian. A Gilda
Tricarico. A Frank Wall. A Mary Joe Moore,
spelled M-O-O-R-E, from the New York Department
of State. A Tunde Ojo, first name spelled
T-U-N-D-E, last name OJO. A Chris Noel. A
witness from Verizon. A Tiesha Lamont, spelled

Proceedings

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2 T-I-E-S-H-A, L-A-M-O-N-T. An Errol Beadle,
3 first name spelled E-R-R-O-L, last name
4 B-E-A-D-L-E. An Adrian Narayan, spelled
5 N-A-R-A-Y-A-N. A record keeper from the company
6 known as Paetec, spelled P-A-E-T-E-C. And
7 another witness from T-MOBILE.

8 It is quite a number of names but
9 once again, the mere mentioning of those names
10 does not impose any burden on either side to
11 call any of these people.

12 The reason I ask you those names is
13 that if any of you know those people or
14 recognize any of those names.

15 Additionally, I am going to ask you a
16 series of questions. At any time if any of you
17 wish to discuss your answers privately, please
18 let me know and you will be asked to step in the
19 jury room one at a time with counsel and myself.

20 Have any of you ever served in the
21 Armed Services of our country?

22 Anyone?

23 We have Mr. Porciello.

24 PROSPECTIVE JUROR: Yes.

25 THE COURT: Anyone else?

1 Proceedings

2 Now Mr. Porciello, first I want to
3 thank you for your service to your country. But
4 aside from that, you are familiar with the
5 military code of military justice?

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: Can you set aside the law
8 on military justice and accept my law on this
9 case?

10 PROSPECTIVE JUROR: Yes.

11 THE COURT: Thank you very much.

12 Questions to all of you once again.

13 Do you know anything about this case?

14 Have you witnessed anything or read
15 anything in magazines or newspapers or heard or
16 seen anything on television or radio or heard
17 anything from friends or relatives?

18 Do any of you or do any of your
19 friends or relatives work for a law enforcement
20 agency such as the Police Department, the
21 District Attorney's Office or any federal law
22 enforcement agency or state?

23 All right.

24 Or have you or anyone close to you
25 done such work in the past?

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Proceedings

Sometimes that brings up some other hands as well.

We will go along. Who had their hand up in the front row?

We will go along first with Miss Lester.

PROSPECTIVE JUROR: Yes.

THE COURT: Who is this person, please?

PROSPECTIVE JUROR: My husband.

THE COURT: And his occupation?

PROSPECTIVE JUROR: He is a Freeport Police Officer, forty-three years.

THE COURT: And moving along to the right, who next had their hand up?

Miss Barrington, you had your hand up?

PROSPECTIVE JUROR: Yes.

THE COURT: Who is this person?

PROSPECTIVE JUROR: Just my neighbor, a close neighbor.

THE COURT: And what police agency or law enforcement agency?

PROSPECTIVE JUROR: A detective for

1 Proceedings

2 New York City.

3 THE COURT: And Mr. Cecere, did you
4 have your hand up?

5 PROSPECTIVE JUROR: Yes. Very close
6 friend of mine is a District Attorney in
7 Brooklyn.

8 I have numerous people in Suffolk and
9 Port Authority in Queens.

10 THE COURT: Mr. Martino, who is this
11 person? You don't have to name them.

12 PROSPECTIVE JUROR: My sister, her
13 fiancée, and a close friend, all NYPD.

14 THE COURT: Moving along to the
15 right, did anyone else have their hand up?

16 Oh, I am sorry, I missed you.

17 PROSPECTIVE JUROR: I didn't put it
18 up. I didn't realize it was. I have a brother
19 and sister-in-law who served on the New York
20 police force.

21 THE COURT: And Mr. Fuller, did you
22 have your hand up?

23 PROSPECTIVE JUROR: Yes. I have a
24 friend in NYPD.

25 THE COURT: Anyone else in the first

Proceedings

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2 row?

3 Miss Price.

4 PROSPECTIVE JUROR: Sister-in-law in
5 Sheriff's Department.

6 THE COURT: Anyone -- did I miss
7 anyone else in the front row?

8 We will go to the back row.

9 Did we have hands up back there?

10 Beginning with you, Mr. Porciello.

11 PROSPECTIVE JUROR: Neighbor in New
12 York City Police Department. My niece's husband
13 is a Judge. And I have a very good friend who
14 is also a Supreme Court Judge.

15 MR. KEAHON: I can't hear you, sir, I
16 am sorry.

17 PROSPECTIVE JUROR: Judge.

18 THE COURT: And moving along to the
19 right, I believe you had your hand up, sir. Is
20 it Mr. Moir?

21 PROSPECTIVE JUROR: Moir.

22 Two of my friends work out with
23 Nassau County Police.

24 THE COURT: To the right, anyone?
25 Mr. Riordan, you had your hand up?

1 Proceedings

2 PROSPECTIVE JUROR: My cousin has a
3 son who is Suffolk County Police, First
4 Precinct. Then I have a neighbor who is New
5 York City Police.

6 THE COURT: All right.

7 Anyone else along the back row?

8 We have Miss Werner.

9 PROSPECTIVE JUROR: Yes.

10 PROSPECTIVE JUROR: My son-in-law is
11 a New York City Police Officer and we have a
12 very good friend in the department also.

13 MR. KEAHON: I am sorry, I just can't
14 hear.

15 THE COURT: That is all right.

16 If you don't mind, the acoustics is
17 quite bad in this room when the ventilation
18 kicks in, which we definitely need.

19 PROSPECTIVE JUROR: My son-in-law is
20 a New York City Police Officer and we have very
21 close friends that are New York City Police
22 Officers.

23 THE COURT: Thank you.

24 Anyone else?

25 Did I miss anyone else?

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Proceedings

Thank you.

Do any of you or do any of your friends or relatives work as a paid employee or volunteer for a lawyer or group principally concerned with the law?

Mr. Cecere, you anticipated that.

Or anyone done such work in the past or friend?

Mr. Cecere, I think you answered that before.

PROSPECTIVE JUROR: No. I am actually an attorney.

THE COURT: Oh, yourself.

THE COURT: Yes.

Anyone else?

PROSPECTIVE JUROR: My cousin is a lawyer.

THE COURT: Thank you, Miss McKinley.

THE COURT: And did I miss anyone else?

Have any of you ever served on a Grand Jury in the past?

Mr. Moir, about how long ago was this, please?

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Proceedings

PROSPECTIVE JUROR: I would say eight years ago.

THE COURT: Did anyone else have any Grand Jury experience before?

Mr. Moir, I will confine my questions to you. You were instructed on the law from the original impaneling Judge as well as attorneys you would work with on a daily basis, Assistant District Attorney.

Would you be able to set aside the law you have learned for your services as a Grand Juror and accept the law exclusively as I instruct you in this case?

PROSPECTIVE JUROR: Sure.

THE COURT: You will be able to put it aside?

PROSPECTIVE JUROR: Yes.

THE COURT: Anyone served on a trial jury before, either criminal or civil, it doesn't matter?

You got picked on twice.

PROSPECTIVE JUROR: Yeah, I always get picked on.

THE COURT: Would you have any

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Proceedings

trouble following my instructions?

PROSPECTIVE JUROR: No.

THE COURT: May I ask, was it civil?

PROSPECTIVE JUROR: Civil.

THE COURT: About how long ago was
this?

PROSPECTIVE JUROR: Four years ago.

THE COURT: And were you, at that
point in time were you able to reach a verdict
or was it settled?

PROSPECTIVE JUROR: No, we reached a
verdict.

THE COURT: You did reach a verdict?

PROSPECTIVE JUROR: Yes.

THE COURT: Who else did I-- any
other trial jurors?

Beginning with Miss Barrington, you
served on a trial jury?

PROSPECTIVE JUROR: Yes. It was
maybe about eight years ago and it was settled
the first day.

THE COURT: Civil or criminal?

PROSPECTIVE JUROR: I think it was
civil.

Proceedings

THE COURT: Thank you.

Who else in the front row?

We have Miss Price.

PROSPECTIVE JUROR: Yes.

THE COURT: About how long ago was
this, please?

PROSPECTIVE JUROR: I guess about six
years.

THE COURT: All right. And was it
civil or criminal?

PROSPECTIVE JUROR: Civil.

THE COURT: Was it settled or was a
verdict reached?

PROSPECTIVE JUROR: Settled after two
days.

THE COURT: Thank you.

Anyone else in the front row that I
missed?

Going to the back row.

Mr. Porciello.

PROSPECTIVE JUROR: About twenty
years ago, civil case, and it was settled.

THE COURT: Thank you.

Mr. Riordan.

Proceedings

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2 PROSPECTIVE JUROR: About twenty
3 years also, civil case, settled by the jury.

4 THE COURT: And we have
5 Miss Crawford. About how long ago was this,
6 please?

7 PROSPECTIVE JUROR: Twelve years ago,
8 civil case settled out of court.

9 THE COURT: Did I miss anyone?

10 Once again, thank you all for your
11 prior service as jurors.

12 Once again, I have to extract a
13 promise, if you feel comfortable giving it to
14 the Court.

15 In those other cases you were
16 instructed on the law either final or
17 preliminary instructions by the Court, would you
18 be able to set aside all the law you learned
19 from that prior service and accept the law as I
20 give you exclusively?

21 Can everyone give me that assurance?

22 PROSPECTIVE JURORS: Yes.

23 THE COURT: Is there anyone that can
24 not?

25 Thank you.

Proceedings

The following questions concern matters of a more personal nature. So if the answer to any of them is yes or they make you wish to discuss anything, anything at all, please merely note the question and then when I call for hands, just let me know and you will be called into the jury room one at a time to discuss them.

Have any of you or anyone in your family or close to you been the victim of a crime? Accused of a crime? Or witnessed a crime? In particular, have you or anyone close to you been the victim of Identity Theft?

Next, the jury's verdict must be unanimous. Since twelve jurors seldom agree immediately, you would have to deliberate in order to reach a unanimous verdict.

In order to sit on this jury you would have to be able to promise both the People and defense that you will, number one, participate in the deliberations. Number two, express your views based on the evidence that you hear and see exclusively as you hear and see in this trial. Number three, listen to the

Proceedings

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2 views of the other jurors. And number four,
3 keep an open mind.

4 If there is anyone who can not, we
5 have to discuss that.

6 You must judge each witness as an
7 individual and determine whether and to what
8 extent you believe his or her testimony.

9 In this case the People may offer
10 testimony from various police officers. They
11 take the same oath as other witnesses. They are
12 no more or less credible than other witnesses
13 simply by virtue of their occupation. That is
14 the law.

15 Do any of you have feelings about the
16 police, District Attorney, or law enforcement in
17 general that would lead you to give their
18 testimony more weight than any other witnesses?

19 If so, we have to discuss it.

20 Each witness's testimony must be
21 evaluated on it's own merit.

22 Each defendant in a criminal trial
23 must be judged solely on the evidence. You
24 realize, not everyone can make such objective
25 determinations. Prospective jurors are human

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Proceedings

and may have prejudices and sympathies. I know you understand, prejudices and sympathies do not belong in the courtroom.

Some of you may have had unpleasant circumstances which lead you to believe certain groups are more honest or less likely to be wrongly accused. You may not allow such to interfere with your deliberations.

If anyone feels you might have prejudicial or sympathetic feelings, you are bound by your oath to tell me.

By now you have the general kinds of things that effect your qualifications to be a juror.

If any of you know something about yourself that others might think might prevent you from being a fair and impartial juror in this case, please be candid and tell me.

Again, please do not ask to be excused because you don't want to perform jury service.

At this time if you want to discuss anything privately or have a yes answer, please raise your hand, you will be called into the

1 Proceedings

2 jury room one at a time. Just allow us a moment
3 to set up.

4 Counsel.

5 (Whereupon the following occurred in
6 the jury room.)

7 (Whereupon prospective juror
8 entering).

9 THE COURT: Miss McKinley, please
10 have a seat.

11 PROSPECTIVE JUROR: I am in the
12 process, my check is being garnished for Mercy
13 Hospital. I don't know if this matters. They
14 are claiming I have no insurance when I gave
15 birth to my son, who will be fifteen, which I
16 did. My cousin is trying to help me figure that
17 out. And my check is being garnished for like
18 seven months now.

19 THE COURT: Do you feel, what I
20 described to you about the case, do you feel
21 what is going on in your life right now cause
22 you to be preoccupied so you couldn't give a
23 fair trial to the defense and the People?

24 PROSPECTIVE JUROR: It is definitely
25 aggravating me. I am preoccupied. I don't make

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Proceedings

that much money as it is. Every time I get a raise I don't feel it. I work for a supermarket. They already took almost a thousand dollars out of my check.

THE COURT: If you don't mind waiting outside for just a moment. Thank you.

PROSPECTIVE JUROR: Sure.

(Complying.)

MR. KEAHON: Is this Miss McKinley?

THE COURT: Is there, based upon Miss McKinley's statement for being preoccupied, is there consent?

MR. KEAHON: I have no objection.

MR. PEARL: I have no objection.

THE COURT: Consent.

PROSPECTIVE JUROR: (Returning).

THE COURT: Miss McKinley, I apologize, having brought up personal matters, you are being honest according to your oath, so you are going to be discharged by the Court.

PROSPECTIVE JUROR: Do I call up again?

THE COURT: No, you don't have to.

PROSPECTIVE JUROR: Thank you very

Proceedings

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2 much.

3 MR. KEAHON: Good luck.

4 Could we hold it just one second.

5 We are going to be on trial five
6 weeks, jurors when they find out they are not
7 being paid are going to be outraged because we
8 all know that many companies and businesses at
9 most will pay you two weeks. We are asking
10 these people to come on board for five to six to
11 seven weeks. I think in fairness, we should
12 find out whether or not they know whether or not
13 they are going to be paid or not.

14 How do they survive on forty dollars
15 a day?

16 THE COURT: Isn't that given in the
17 jury selection? That is something we never
18 brought up.

19 THE CLERK: I don't know what they
20 deal with downstairs.

21 THE COURT: I did give them the out,
22 Mr. Keahon, of discussing compelling
23 circumstances, if they have hardships, as
24 Ms. McKinley.

25 MR. KEAHON: I have had it numerous

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Proceedings

times where jurors after two weeks raise their hand and say I am not getting paid any more, they only pay me a week or two weeks, and I have had jurors want to walk out.

THE COURT: All right. Can you call in to make sure that is what they are discussed as jurors and they're not responsible otherwise.

MR. KEAHON: I think it is forty dollars a day.

THE COURT: That is the reason I don't give out a calendar how long a trial is going to be. I wanted to make sure they had it in front of them how long the trial would be.

MR. KEAHON: I don't think there is any advice given in any of the pamphlets or speaking to the prospective jurors about checking to find out. I don't think there is any company that pays more than two weeks. I mean in the old days when we were doing it Judge, the local guys would go two, three months.

THE COURT: What do you mean we?

MR. KEAHON: Cowboy.

That is true.

Proceedings

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2 THE CLERK: Judge, nobody is
3 answering down there. I would bet anything that
4 they do not. Let me say, people know that they
5 should check with their employers to see if they
6 get paid for more than two weeks.

7 THE COURT: Mr. Pearl, do you wish to
8 be heard on this as far as --

9 MR. PEARL: Judge, if you want to
10 voir dire on it.

11 THE COURT: I think we have. As we
12 bring each person who raises their hand, we will
13 bring them in and discuss it with them very
14 briefly.

15 I think it would be appropriate to
16 make an announcement to all the prospective
17 jurors as they came in and for our next panel.
18 In all likelihood will not pick a panel from
19 this. I don't know. Quite a few people stayed.
20 I will make the announcement and inform them
21 economic hardship is one of the hardships
22 recognized by the Court. If you find you will
23 be preoccupied by lost wages, that is something
24 we all would like to know.

25 MR. KEAHON: Maybe before they go

1 Proceedings

2 tonight, tell them to check with whoever they
3 work with.

4 THE COURT: Yes, I will. The Court
5 is obliged to your assistance. Sage as always.
6 Sage is code word.

7 MR. KEAHON: Who is our next one?

8 THE CLERK: I don't know what order
9 they are bringing them in.

10 Number five.

11 (Whereupon prospective juror
12 entering.)

13 THE COURT: Mr. Cecere, please have a
14 seat.

15 PROSPECTIVE JUROR: Good afternoon.

16 THE COURT: Counsel, I will leave it
17 to you. I guess first, where is your area of
18 practice?

19 PROSPECTIVE JUROR: We do mostly
20 civil litigation and real estate. I am a
21 partner in my firm that handles the real estate.
22 To be involved in a case, my office is in
23 Queens, I am not against serving but the
24 problem, I have to get a hundred miles from my
25 office to here.

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Proceedings

THE COURT: This is the question.

MR. KEAHON: We have no objection,
Judge.

PROSPECTIVE JUROR: Plus I just
finished a civil litigation where there was an
issue. A son stole mother's identity, flew to
Taiwan, we couldn't do our closing, ended up in
supreme litigation.

THE COURT: In other words, you are
saying your obligation to your own clients, that
you would be preoccupied in this matter?

PROSPECTIVE JUROR: Yes.

THE COURT: We have a consent?

Consent?

MR. KEAHON: Yes.

MR. PEARL: Yes.

THE CLERK: Just report back
downstairs.

MR. KEAHON: Do you want us to speak
quickly and say consent or make a record?

THE COURT: If you wouldn't do it
immediately because your colleague is not of the
same mind.

MR. KEAHON: I would not do that. I

1 Proceedings

2 turned to him and said you want to consent.

3 THE COURT: All right.

4 Well, if you are both in agreement,
5 that is fine. Anything to save time.

6 THE CLERK: Number six.

7 (Whereupon prospective juror
8 entering.)

9 THE COURT: Miss Barrington, you are
10 very patient. Thank you so much. Please have a
11 seat.

12 PROSPECTIVE JUROR: (Complying.)

13 THE COURT: Miss Barrington, I always
14 ask the last question first, before we get into
15 any specifics. Based upon what we have heard so
16 far, do you think you would have any difficulty
17 being a fair and impartial juror for me in the
18 case?

19 PROSPECTIVE JUROR: I am not sure. I
20 just remember a person at work that had identity
21 theft and I am nervous now, so I can't even
22 think of her name but I remember all the trouble
23 she had with all going through all that. So
24 maybe that would effect it a little and then you
25 have asked do we know anyone who had a crime.

1 Proceedings

2 THE COURT: Yes.

3 PROSPECTIVE JUROR: I forgot, I know
4 a few other police officers and I know a police
5 officer friend, close also that was murdered
6 around three years ago, Pat Raftery.

7 THE COURT: I am very sorry about
8 that.

9 PROSPECTIVE JUROR: It was an African
10 American that killed him and his partner.

11 THE COURT: Do you feel sitting in
12 this case, I am not cutting you off, I want to
13 cut to the chase, if you feel now, you have
14 observed Mr. Whitehead, I know you want to be a
15 fair and impartial juror, you are being honest
16 according to your oath, you have heard my
17 instructions regarding police testimony, do you
18 feel you might have some difficulty?

19 PROSPECTIVE JUROR: It might effect
20 it a little bit.

21 THE COURT: If you wait outside for
22 just a moment.

23 PROSPECTIVE JUROR: Sure.

24 THE COURT: Thank you.

25 PROSPECTIVE JUROR: (Complying.)

1 Proceedings

2 THE COURT: Do you wish to question
3 her further?

4 MR. KEAHON: I would -- I mean, if
5 you want, I will go into it now with her but I
6 think it should be a cause.

7 MR. PEARL: Consent, Judge.

8 THE COURT: Consent?

9 MR. KEAHON: Sure.

10 THE COURT: Okay.

11 All right, we will bring in
12 Miss Barrington, please.

13 (Whereupon prospective juror
14 entering.)

15 THE COURT: Sorry to keep you
16 waiting.

17 PROSPECTIVE JUROR: That wasn't too
18 long.

19 THE COURT: You don't even have to
20 sit down because I appreciate your concerns and
21 I appreciate your honesty. This is perhaps not
22 the trial for you. All right. And but I thank
23 you very much for your service.

24 PROSPECTIVE JUROR: Thanks. Sorry.

25 THE COURT: Please, do not apologize.

Proceedings

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2 I am sorry to have to ask these kinds of
3 questions.

4 (Whereupon prospective juror
5 leaving.)

6 THE CLERK: Number seven.

7 (Whereupon prospective juror
8 entering.)

9 THE COURT: Hello, Miss Lester, you
10 have been very patient, thank you.

11 Please have a seat.

12 Now Miss Lester, before we get to the
13 specific questions as far as a yes answer, I
14 always ask the last question first, which is,
15 based upon what you have heard so far, do you
16 think you would be able to be a fair and
17 impartial juror both for the People and defense
18 in this case?

19 PROSPECTIVE JUROR: I am not sure.

20 THE COURT: I understand. That is
21 why we call people in. It can be awkward.

22 PROSPECTIVE JUROR: I tend to, you
23 know, just to be totally honest, you know, tend
24 to go with the Police Department.

25 THE COURT: I understand.

1 Proceedings

2 PROSPECTIVE JUROR: But I think the
3 defendant looks a little familiar to me. I
4 don't know if I have seen him around or what but
5 he does look familiar to me, so.

6 THE COURT: Okay. Now you heard my
7 instructions regarding the police testimony. So
8 I take it then because of your own feelings
9 regarding the police, that would be very
10 difficult for you to follow?

11 PROSPECTIVE JUROR: Yes. I can't say
12 exactly that it would but I can't say for sure
13 that it would not.

14 THE COURT: Okay. See, this is how,
15 what it ultimately turns into, is that, have to
16 be able to promise, to give your solemn word
17 that you will be fair to both sides. In other
18 words, if you were the prosecution, you would
19 want you as a juror. And if you were the
20 defense, would want you as a juror if you were
21 occupying their chairs.

22 Now if you can't say that, if you
23 can't say that, that is quite understandable.
24 That is why we are having this question. If you
25 can, that is fine as well. There is no wrong

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Proceedings

answer. So I leave it to you.

PROSPECTIVE JUROR: I would like to be able to say that I could because I would like to do the right thing but I don't really know that I could.

THE COURT: I understand.

If you would wait outside for just a moment. Thank you very much.

PROSPECTIVE JUROR: (Complying.)

MR. KEAHON: Her husband is a Freeport PD.

THE COURT: All right.

MR. KEAHON: I will consent.

MR. PEARL: I consent.

(Whereupon prospective juror entering.)

THE COURT: I appreciate your candor and answer honestly according to your oath. You will be discharged with the thanks of the court. Thank you very much. Don't apologize, please.

(Whereupon prospective juror leaving.)

THE COURT: Off the record.

(Whereupon there was a discussoin off

Proceedings

the record.)

(Whereupon prospective juror
entering.)

THE COURT: Hello there, Mr. Fuller.
You have been very patient, thank you, very
much.

Mr. Fuller, I always ask the last
question first, which is, based upon what you
have heard so far, would you be able to promise
me that you can be a fair and impartial juror to
both sides?

PROSPECTIVE JUROR: Yes.

THE COURT: You had a yes answer to
one or more of my questions; what is that?

PROSPECTIVE JUROR: Currently my
uncle is under fraud for someone he knows stole
his credit card, opened up an account. We are
currently waiting for the credit card company to
send a report stating when the account's been
opened.

THE COURT: And I apologize for
having to ask questions about something going on
in your family right now but -- were you close
with your uncle?

1 Proceedings

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: Now you know that
4 Mr. Whitehead is charged with that crime of
5 identity theft.

6 PROSPECTIVE JUROR: I understand.

7 THE COURT: If you are selected as a
8 juror in this case you would have to be able to
9 come in this jury room and be able to give both
10 sides your solemn word that you would decide the
11 case on the evidence presented in this courtroom
12 alone.

13 PROSPECTIVE JUROR: Uh-huh

14 THE COURT: So when you are making
15 that decision regarding Mr. Whitehead's guilt or
16 innocence, you would not be able to allow what
17 is going on with your uncle effect your judgment
18 at all. That is the problem, is that we want
19 our jurors to have common sense. That is why
20 you are selected.

21 PROSPECTIVE JUROR: Yeah.

22 THE COURT: So that comes from life
23 experiences but those experiences can be a
24 burden as well.

25 So do you think that what is going on

1 Proceedings

2 with your uncle right now, do you think it might
3 effect your judgment in some way?

4 PROSPECTIVE JUROR: Maybe it may. In
5 all honestly, it may.

6 THE COURT: I know you are being
7 honest.

8 If you wouldn't mind waiting with the
9 Officer for a moment, Mr. Fuller.

10 PROSPECTIVE JUROR: (Complying.)

11 MR. PEARL: Judge, I am a little torn
12 on him because he indicated he would be fair and
13 impartial.

14 THE COURT: Immediately.

15 I would allow you, do you want to
16 question him?

17 MR. PEARL: I will ask him.

18 THE COURT: Certainly.

19 (Whereupon prospective juror
20 entering.)

21 THE COURT: Mr. Fuller, if you can
22 come back here. If you would be so kind to have
23 a seat. We just have a few questions for you.

24 Miss Franzese or Mr. Pearl.

25 MR. PEARL: Is it possible for you to

1 Proceedings

2 separate what happened with your uncle and just
3 judge what is going on in this case based on the
4 testimony you hear from the stand?

5 PROSPECTIVE JUROR: I can separate
6 it, yes. Um-- I think possibly though, that I
7 would end up ultimately rethinking exactly what
8 had happened with my family and sit there and
9 say how would I want him to be judged as well.

10 At first I will be able to separate
11 it. This is one case. This is another. But I
12 think at the end it is going to end up coming
13 back to my family.

14 MR. PEARL: And you couldn't separate
15 out the defendant, give him a fair -- listen to
16 the evidence and to judge whether or not he is
17 guilty or not guilty based on just what you hear
18 from the--

19 PROSPECTIVE JUROR: That would be a
20 little hard for me to say yes or no to right
21 now.

22 THE COURT: Mr. Keahon, anything?

23 MR. KEAHON: No.

24 Thank you very much for your
25 frankness. That gives everyone a fair trial.

1 Proceedings

2 So your answer was the right answer coming in
3 here to talk to us. Thank you.

4 THE COURT: Thank you.

5 MR. PEARL: Consent.

6 MR. KEAHON: Consent.

7 THE COURT: Thank you, Mr. Fuller,
8 you will be discharged with the thanks of the
9 Court. You will receive full credit as you sat
10 on this case to the conclusion.

11 My apologies for asking a family
12 matter. You understand my necessity. Thank
13 you.

14 (Whereupon prospective juror
15 leaving.)

16 (Whereupon prospective juror
17 entering.)

18 THE COURT: Hello, Miss Crawford.

19 PROSPECTIVE JUROR: Hi.

20 THE COURT: Thank you very much, you
21 were very patient. Please have a seat.

22 PROSPECTIVE JUROR: Thank you.

23 THE COURT: Miss Crawford, I always
24 ask the last question or the ultimate question
25 first, which is, before we get into any

1 Proceedings

2 specifics, based upon what you have heard so
3 far, my brief description of the case, would you
4 be able to promise both sides that you could be
5 a fair and impartial juror for me?

6 PROSPECTIVE JUROR: I think so, yes.

7 THE COURT: Okay. And did you have
8 any yes to any or more of my questions to
9 discuss in private?

10 PROSPECTIVE JUROR: I guess it was
11 but I am not sure what it is considered but one
12 of my bank statements, probably five, six years
13 ago there was money missing. They kept giving
14 me the run around. The bank eventually replaced
15 the money but it seems I purchased some phones
16 in Brooklyn and somebody there used my card for
17 whatever but the money was returned.

18 THE COURT: All right.

19 PROSPECTIVE JUROR: And I just felt
20 that was relevant.

21 THE COURT: All right. That is why
22 we have to discuss that now.

23 Were you satisfied with the way that
24 the bank had handled this?

25 PROSPECTIVE JUROR: Yes.

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Proceedings

THE COURT: Do you feel that it could give you any negative feelings either toward an agency such as the District Attorney's Office, the police or someone accused of stealing another person's identity, such as Mr. Whitehead?

PROSPECTIVE JUROR: No. I think I am partial.

THE COURT: You mean --
Impartial?

PROSPECTIVE JUROR: Impartial.

THE COURT: Partial means you favor the one. Impartial means --

PROSPECTIVE JUROR: Impartial.

THE COURT: Before you said when I asked you if you could be fair and impartial to both sides, you said, I think so. Sometimes that is a word of modesty for which people are always to be commended but the other times it is kind of like being able to not make up your mind.

You understand, to be selected as a juror you would have to be able to give your solemn promise that you could be fair and

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Proceedings

impartial to Mr. Whitehead and to the People.

Do you feel comfortable giving me
your word?

PROSPECTIVE JUROR: Yes.

THE COURT: All right.

Now if the-- if you heard allegations
concerning activities in Brooklyn, do you think
that that might effect, in addition to Suffolk
County, do you think that that might effect how
you look at this case?

PROSPECTIVE JUROR: No. I mean wrong
is wrong as far as I am concerned, no matter
where it is.

THE COURT: In other words the locale
wouldn't effect it at all?

PROSPECTIVE JUROR: No.

THE COURT: Okay. All right.

Anything that you had wished to
discuss prior to leaving?

PROSPECTIVE JUROR: That was it.

THE COURT: That was it. All right.

Now in the reference to Miss Crawford
having been the victim of a misappropriation
concerning her bank account, that is of a

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Proceedings

personal nature. Any follow up questions, I would like to remain in this room rather than discuss in open court.

Beginning with Mr. Pearl, any questions?

MR. PEARL: Did you ever report it to the police? I am just curious.

PROSPECTIVE JUROR: Yeah. I went all around the world with it. I work in Westbury, my bank is in Westbury but it happened in Brooklyn. They sent me to the 3rd Precinct, they sent me to Brooklyn, it was all over the place.

MR. PEARL: How long was it?

PROSPECTIVE JUROR: It has been awhile, about five, six years. It has been awhile before I got all my alerts and everything before I signed up for that.

MR. PEARL: Thank you.

THE COURT: Mr. Keahon, any questions?

MR. KEAHON: No, thank you.

THE COURT: Miss Crawford, you can take your seat with all of the other potential

Proceedings

jurors. Just take your seat. Thank you.

(Whereupon prospective juror
leaving.)

(Whereupon prospective juror
entering.)

THE COURT: Hello, Miss Desner, you
have been very patient. Thank you so much.
Please.

PROSPECTIVE JUROR: I don't know if
it is pertinent but I might as well throw it
out.

Two years ago my husband was in a car
accident on a business trip in Philadelphia. He
was all right and the passenger was all right.
But two years later they filed a law suit. I
wasn't in the car. I wasn't a passenger or
anything but they're suing me and my husband for
damages. She claims she is injured now after
two years. So I don't know if--

THE COURT: That is why we discuss
things privately because the main question is,
is that, do you feel first being involved with
this, sustained a law suit --

PROSPECTIVE JUROR: The insurance

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Proceedings

company's handling it. They called us in a few months. I don't know if they are going to settle out of court. This is where it stands.

THE COURT: Could it cause you to be preoccupied at all, that you couldn't give your undivided attention?

PROSPECTIVE JUROR: No. The lawyer says it seems like a done deal. There is no real adherent injuries or anything that would -- damages or anything. So I don't think that um -- you know, it is going to be there, probably going to settle out of court. It won't be anything.

THE COURT: Okay. So the ultimate question I ask everyone is, based upon what you have heard so far, would you be able to promise both sides you can be a fair and impartial juror in this case?

PROSPECTIVE JUROR: I would try my hardest.

THE COURT: I know you would and I hate to pursue the question further. Sometimes we say I think so out of modest.

PROSPECTIVE JUROR: Uh huh.

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Proceedings

THE COURT: Understand how in a case to be sworn as a juror, I think so may not be enough.

PROSPECTIVE JUROR: Uh-huh.

THE COURT: That you have to be able to give your solemn word that you can be fair.

Do you feel comfortable?

PROSPECTIVE JUROR: I would -- the best of my ability I would try my hardest.

THE COURT: I understand.

In other words you don't see anything that you have witnessed so far or heard so far effecting your judgment to be fair and impartial both to Mr. Keahon's client, Mr. Whitehead, as well as to the people?

PROSPECTIVE JUROR: Right. I think so.

THE COURT: Okay. See, there is that word again.

PROSPECTIVE JUROR: I think so.

THE COURT: I apologize.

PROSPECTIVE JUROR: Right. Right.

THE COURT: You understand why for some people I think so is their bond, I will

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Proceedings

give it a hundred percent.

PROSPECTIVE JUROR: I will give it --
I will give a hundred and ten percent. Whether
you know-- again --

THE COURT: I know.

PROSPECTIVE JUROR: It is just so
hard to--

MR. KEAHON: I have one question, if
I could.

THE COURT: Yes.

MR. KEAHON: If you had a good friend
or relative on trial, would you want someone
with your state of mind and the way you think
about things sitting as a juror?

PROSPECTIVE JUROR: Yeah, I think so.

MR. KEAHON: I am sorry?

PROSPECTIVE JUROR: Yes, I think so.

MR. KEAHON: I just have one other.

You are involved in a law suit?

PROSPECTIVE JUROR: Uh-huh.

MR. KEAHON: And there is an
accusation that your husband caused injury?

PROSPECTIVE JUROR: Injury, yeah.

MR. KEAHON: And you are being sued

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Proceedings

too?

PROSPECTIVE JUROR: Yes, because it
is my car.

MR. KEAHON: So you know what it is
like when accusations are being made?

PROSPECTIVE JUROR: Right.

MR. KEAHON: And you heard the Judge
say he is presumed to be innocent.

Can you follow that?

PROSPECTIVE JUROR: Yes.

MR. KEAHON: Thanks.

THE COURT: People, any questions?

MR. PEARL: No, thank you.

THE COURT: Is there anything else
you would like to discuss privately?

PROSPECTIVE JUROR: I think that is
all.

THE COURT: Then you can take your
seat with the other potential jurors. Thank
you. Thank you so much, again.

PROSPECTIVE JUROR: (Complying.)
(Whereupon prospective juror
entering.)

THE COURT: Hello, Miss Campbell.

1 Proceedings

2 PROSPECTIVE JUROR: Werner.

3 THE COURT: Miss Werner. I

4 apologize. Please have a seat.

5 Miss Werner, I always ask the last
6 question first, which is, based upon what you
7 have heard so far, a brief description of the
8 case, would you be able to promise both sides
9 that you could be a fair and impartial juror for
10 me?

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: Okay.

13 Now you had a yes answer to one or
14 more of my questions. We can discuss it.

15 PROSPECTIVE JUROR: I was a victim of
16 a crime. I was mugged twice.

17 THE COURT: I am sorry. And I do
18 apologize, I have to bring this up, you
19 understand the necessity for it. It is to make
20 sure that what happens to a person in their past
21 doesn't effect their judgment now. That is the
22 only reason we inquire.

23 About how long ago was this?

24 PROSPECTIVE JUROR: The last one was
25 probably about twenty years ago and then we also

1 Proceedings

2 had um -- a credit card stolen over the
3 Internet, credit card number um-- stolen over
4 the Internet and used.

5 THE COURT: About how long ago was
6 the credit card?

7 PROSPECTIVE JUROR: Let me see.
8 About maybe ten years ago.

9 THE COURT: Now the first thing to
10 talk about is the mugging.

11 Was anyone ever apprehended? Was
12 anyone ever caught?

13 PROSPECTIVE JUROR: No. It was
14 actually two incidents.

15 THE COURT: Two muggings?

16 PROSPECTIVE JUROR: Yeah. I lived in
17 Brooklyn.

18 THE COURT: So did I.

19 What part of Brooklyn?

20 PROSPECTIVE JUROR: East Flatbush.

21 THE COURT: Albany Avenue between
22 Declartin.

23 PROSPECTIVE JUROR: I lived between
24 East Forester.

25 MR. KEAHON: Did you guys date?

1 Proceedings

2 PROSPECTIVE JUROR: We are actually
3 married.

4 THE COURT: For the record, we don't
5 know each other, correct?

6 PROSPECTIVE JUROR: No.

7 THE COURT: Thank you, Miss Werner.
8 We have to establish that on the
9 record.

10 Did the fact the people that mugged
11 you were not apprehended, does that give you any
12 negative feelings towards prosecuting agencies
13 such as the District Attorney, Police Department
14 or people accused of crimes such as
15 Mr. Whitehead?

16 PROSPECTIVE JUROR: Not really. My
17 son was a police officer. I like him.

18 THE COURT: You heard my instructions
19 regarding police officer testimony. Would you
20 be able to follow that?

21 PROSPECTIVE JUROR: Uh-huh.

22 THE COURT: You would be?

23 PROSPECTIVE JUROR: I believe so,
24 yeah.

25 THE COURT: Now with you being the

Proceedings

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2 victim of a credit card fraud, like that is a
3 form of identity theft.

4 PROSPECTIVE JUROR: Uh-huh.

5 THE COURT: Someone stealing your
6 information and using it. Mr. Whitehead stands
7 accused of that crime.

8 If you are selected as a juror in
9 this case, would you be able to put aside what
10 happened to you and your family as a result of
11 that and only decide this case on the facts
12 presented here and not let that effect you or
13 cloud your judgment at all?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: Okay.

16 Now is there anything else you would
17 like to discuss privately?

18 PROSPECTIVE JUROR: No.

19 THE COURT: All right.

20 Any follow up questions to
21 Miss Werner, her family being crime victims?

22 Beginning with the People.

23 MR. PEARL: You could be fair and
24 impartial in this case?

25 PROSPECTIVE JUROR: I believe so.

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Proceedings

MR. PEARL: You have to be a little--

PROSPECTIVE JUROR: Yes.

MR. PEARL: Yes. That is what they want. Thank you.

THE COURT: Mr. Keahon.

MR. KEAHON: How are you?

PROSPECTIVE JUROR: Good. Thank you.

MR. KEAHON: Your son, your son-in-law is with the New York City PD.

We all believe in our police force and many times we make calls for their assistance.

Do you believe that a detective could take the witness stand and swear to tell the truth and yet lie under oath?

PROSPECTIVE JUROR: Um-- I guess anybody is possible of doing it. I don't think they're special, above the law.

MR. KEAHON: The Judge is going to charge you that you have to treat all witnesses the same.

Is there anything in your feelings that you have now, that you believe that a police officer or detective is worth -- their

1 Proceedings

2 testimony is worth more than any other witness?

3 PROSPECTIVE JUROR: No.

4 MR. KEAHON: You can understand my
5 concerns about what happened to you with that
6 identity theft with yourself.

7 Would you agree, that since it is a
8 very similar charge in this case, you perhaps
9 would be better suited to sit on another type of
10 case rather than something that mimics what
11 happened to you?

12 PROSPECTIVE JUROR: Um--

13 THE COURT: Remember there is no
14 wrong answer and there is no trick questions.

15 PROSPECTIVE JUROR: Yeah-- I don't
16 know. Um-- you know, it was all resolved. We
17 didn't-- nothing was, you know -- it didn't cost
18 us anything, just aggravation.

19 MR. KEAHON: Sure.

20 PROSPECTIVE JUROR: It is kind of in
21 the past. Um-- I don't think it would bother me
22 to -- I don't think my opinion would be swayed
23 by what happened to me.

24 MR. KEAHON: And you can totally put
25 it out of your mind?

Proceedings

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2 PROSPECTIVE JUROR: I think so. I
3 put it out of my mind until the Judge asked the
4 question.

5 THE COURT: You can put it out once
6 again?

7 PROSPECTIVE JUROR: I think so.

8 THE COURT: Okay.

9 MR. KEAHON: Thanks.

10 THE COURT: Any other questions?

11 Then you can take your seat with the
12 potential jurors unless there is anything else
13 you would like to discuss privately.

14 PROSPECTIVE JUROR: No.

15 THE COURT: Thank you very much,
16 again.

17 (Whereupon prospective juror
18 leaving.)

19 THE COURT: Off the record.

20 (Whereupon there was a discussion off
21 the record.)

22 (Whereupon prospective juror
23 entering.)

24 THE COURT: Hello there,
25 Miss Campbell.

1 Proceedings

2 PROSPECTIVE JUROR: Laura Palmer.

3 THE COURT: Miss Palmer. My

4 apologies, I jumped over.

5 Please have a seat.

6 PROSPECTIVE JUROR: Thank you.

7 THE COURT: Miss Palmer, I always ask
8 the last question first, please. Thank you once
9 again for being so patient.

10 The ultimate question is, based upon
11 what you have heard so far, would you be able to
12 promise both sides that you could be a fair and
13 impartial juror for me in this case?

14 PROSPECTIVE JUROR: Actually, I
15 can't.

16 THE COURT: Okay.

17 PROSPECTIVE JUROR: I would like to
18 say that I could but I have to be honest with
19 you.

20 THE COURT: And you are being honest
21 according to your oath. What can I do other
22 than commend that. If you don't mind waiting
23 outside for just one moment, please.

24 PROSPECTIVE JUROR: Sure.

25 THE COURT: Thank you.

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PROSPECTIVE JUROR: (Complying.)

THE COURT: I can ask the why. She seems very adamant.

MR. PEARL: I can. Give me a chance.

MS. FRANZESE: He is kidding.

MR. PEARL: I am just curious but I am fine.

THE COURT: Consent?

MR. KEAHON: Sure.

THE COURT: Absent consent, I would have to inquire further.

MR. PEARL: No, no, Judge.

(Whereupon prospective juror entering.)

THE COURT: Miss Palmer, you are going to be discharged with the thanks of the Court.

PROSPECTIVE JUROR: Thank you.

MS. FRANZESE: Take care.

PROSPECTIVE JUROR: I am sorry I can't serve.

THE COURT: I apologize. Thank you for your candor.

PROSPECTIVE JUROR: Thank you, again.

Proceedings

(Whereupon prospective juror
leaving.)

(Whereupon prospective juror
entering.)

THE COURT: Mr. Riordan.

PROSPECTIVE JUROR: Hello, Your
Honor.

THE COURT: You have been very
patient, sir.

PROSPECTIVE JUROR: Thank you.

THE COURT: Mr. Riordan, I always ask
the last question first before we get into any
specifics of the questions.

Based upon what you have heard so far
from me as far as the description of this case,
would you be able to promise both sides that you
could be a fair and impartial juror?

PROSPECTIVE JUROR: I would try.

THE COURT: Okay.

Sometimes that can be said as words
of modesty. You understand how in a case, that
the Court has to require more, that you can feel
comfortable giving me your word that you will be
fair both to the People and to the defendant.

1 Proceedings

2 Do you feel comfortable?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: You had a yes answer to
5 one or more of my questions or anything else you
6 would like to discuss privately?

7 PROSPECTIVE JUROR: There are
8 actually three.

9 I recognize the defense attorney from
10 news publications, past cases. Those cases I
11 don't remember but I just understand his
12 capacity as a criminal defense attorney.

13 THE COURT: Okay.

14 Mr. Keahon.

15 MR. KEAHON: Yes.

16 PROSPECTIVE JUROR: Michael Nolan is
17 a name I recognize, someone possibly from Islip
18 used to be an administrator at Southside
19 Hospital. I am assuming he might be sixty-five
20 years old. His name is common. I don't know if
21 it is the same person.

22 THE COURT: Lets ascertain if it is
23 the same person.

24 Are you aware of any background
25 regarding Mr. Nolan?

Proceedings

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2 MR. PEARL: Somewhat. I don't
3 believe it is the same Nolan. I have to check.

4 THE COURT: Lets assume for the sake
5 sake of argument it turns out to be the same
6 Mr. Nolan and he comes into the courtroom, takes
7 the stand and sits in front of you as a witness.
8 The fact that you know this person or are
9 acquainted with them or recognize their name,
10 would it effect the way that you judge their
11 testimony versus how you would judge a stranger?

12 PROSPECTIVE JUROR: I would believe
13 his testimony.

14 THE COURT: Okay. You would?

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: Then it is something we
17 would have to ascertain the fact that it is not
18 the same person.

19 PROSPECTIVE JUROR: Uh-huh.

20 THE COURT: Anything else?

21 PROSPECTIVE JUROR: The third thing,
22 I have been a victim of identity fraud as it
23 relates to a family member taking checks and
24 endorsing them and collecting amounts under five
25 hundred dollars, and at times also taking credit

1 Proceedings

2 cards from my wife and myself and conducting
3 business that wasn't authorized, leading to
4 change our style, closing accounts, hiding
5 information like that.

6 THE COURT: And I apologize for
7 having to bring up something of a personal
8 family matter, you understand the necessity for
9 asking these questions.

10 PROSPECTIVE JUROR: Of course.

11 THE COURT: Now Mr. Whitehead stands
12 accused of, among other things, identity theft.
13 If selected as a juror you would have to decide
14 this case only on the evidence presented here in
15 court. Do you feel comfortable? Let me know if
16 you can't. There is no wrong answer. But if
17 you are sitting here in this room and going over
18 evidence, discussing with the other jurors, is
19 it-- do you feel that what happened in your own
20 family, do you think it could effect your
21 judgment?

22 PROSPECTIVE JUROR: Yes.

23 THE COURT: Okay.

24 Is there anything you would like to
25 discuss privately?

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PROSPECTIVE JUROR: No.

THE COURT: All right. Then if you
would wait outside for just a moment. Thank you
very much.

PROSPECTIVE JUROR: (Complying.)

THE COURT: No follow up questions?

MR. PEARL: No.

MR. KEAHON: No.

THE COURT: Consent?

MR. PEARL: Yes.

MR. KEAHON: Yep.

THE COURT: Okay.

(Whereupon prospective juror entering
courtroom.)

THE COURT: Please have a seat for
just a moment.

PROSPECTIVE JUROR: (Complying.)

MR. KEAHON: I do have a question.

THE COURT: You have a question.

MR. KEAHON: Mr. Riordan, do you
normally read those portions of the paper that
deal with people that are charged or on trial?

PROSPECTIVE JUROR: Um-- I can't help
but notice them if they're in the beginning of

Proceedings

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2 the paper. I try to see if I can do some
3 research to see what kind of cases will be
4 coming up now, and I wasn't successful in doing
5 that via the Internet but there have been some
6 notorious cases over the last fifteen, twenty
7 years in Suffolk County. I believe they are
8 hard not to notice.

9 MR. KEAHON: Sure. Thank you very
10 much.

11 THE COURT: Thank you.

12 MR. KEAHON: We are all sorry for,
13 you know, you were the victim of an identity
14 theft within your own family.

15 Thank you.

16 PROSPECTIVE JUROR: Thank you.

17 THE COURT: You are going to be
18 discharged with the thanks of the Court,
19 Mr. Riordan. Thank you so much for your time,
20 once again.

21 PROSPECTIVE JUROR: Thank you.

22 (Whereupon prospective juror leaving
23 courtroom.)

24 THE COURT: Hello, Miss Tommasino.

25 PROSPECTIVE JUROR: Hi.

1 Proceedings

2 THE COURT: You have been so patient.

3 Miss Tommasino, before I ask the
4 specific questions, before any yes answers you
5 have, I always cut to the chase, so to speak,
6 and ask the ultimate question, which is, based
7 upon what you have heard so far, do you feel
8 comfortable promising both the People and the
9 defendant that you can be a fair and impartial
10 juror in this case?

11 PROSPECTIVE JUROR: I think I could,
12 yes.

13 THE COURT: When I say sometimes you
14 think you could, sometimes it is words of
15 qualification.

16 PROSPECTIVE JUROR: Yes, I could. I
17 could.

18 THE COURT: Now you had a yes answer
19 to one or more of my questions. Anything you
20 wanted to discuss privately?

21 PROSPECTIVE JUROR: Two things. One
22 thing is on the identity theft, my husband did
23 have a credit card stolen from his office about
24 two and a half years ago, right before the
25 holidays, reported it. It was only a couple of

Proceedings

thousand dollars. We were compensated for it.
It is just that I had to mention that.

The other thing is really nothing to
do with anything you mentioned. If there is a
hardship, do we discuss that now or later?

THE COURT: No, this is a very good
time to discuss it.

PROSPECTIVE JUROR: I am a
physician's assistant for a primary care
practice in Medford. It is a satellite office,
I am the only full-time employee at that office,
which I can show you a schedule to prove it.

THE COURT: Your word is --

PROSPECTIVE JUROR: It is a hardship
for me. If I don't work, I don't get paid. I
have four kids in college right now. It is also
a hardship for my bosses. I am the full-time,
forty hour person. I have somebody today
supposed to work nine to twelve, and I would
have worked twelve to nine tomorrow. I am there
nine to five. It would be difficult for my
bosses to put five or six weeks in.

THE COURT: Your hardship means a
great deal to us, your patients, your bosses,

Proceedings

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2 you know.

3 PROSPECTIVE JUROR: That is the only
4 way they make money. They don't make money, I
5 don't make money.

6 THE COURT: That is a very important
7 consideration.

8 MR. KEAHON: Agree, Judge.

9 THE COURT: Consent?

10 MR. KEAHON: Yes.

11 MR. PEARL: Yes.

12 THE COURT: You will be discharged
13 with the thanks of the Court.

14 PROSPECTIVE JUROR: I would even like
15 to serve sometime. I think I have to be
16 retired. I can't afford to do it until the kids
17 are a little older. I appreciate it. Thank you
18 so much.

19 MS. FRANZESE: Take care.

20 (Whereupon prospective juror
21 leaving.)

22 THE COURT: Off the record.)

23 (Whereupon there was a discussion off
24 the record.)

25 THE COURT: Back on the record.

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Proceedings

(Whereupon prospective juror
entering.)

THE COURT: Hello Mr. Moir, you have
been very patient.

Mr. Moir, before we get into any of
the specific questions, I always ask the
ultimate question first, which is, based upon
what you have heard so far, would you be able to
be a fair and impartial juror to both sides in
this case?

PROSPECTIVE JUROR: Yeah, I think so.

THE COURT: When you say you think
so, do you feel comfortable giving me your word?

PROSPECTIVE JUROR: Yes.

THE COURT: You had a yes answer to
one or more of my questions.

PROSPECTIVE JUROR: You said if you
ever were a victim of a crime. Six years ago my
house was robbed during a party the kids were
having. We were out, my wife and I, and they
stole like cash and cameras.

THE COURT: Were they -- were the
people who did this ever apprehended?

PROSPECTIVE JUROR: No.

1 Proceedings

2 THE COURT: As a result of that, do
3 you have any dissatisfaction directed towards
4 the police or --

5 PROSPECTIVE JUROR: No.

6 THE COURT: -- people accused of
7 crimes, that you feel would color your judgment
8 at all?

9 PROSPECTIVE JUROR: I don't think so,
10 no.

11 THE COURT: Anything else that you
12 had a yes answer to?

13 PROSPECTIVE JUROR: No.

14 THE COURT: Is that it?

15 Because Mr. Moir's experience are
16 crime victims of a personal nature, any follow-
17 up questions would remain in this room.

18 Beginning with the People.

19 MR. PEARL: Thank you for being
20 honest.

21 THE COURT: Mr. Keahon, any follow-up
22 questions?

23 MR. KEAHON: I have no questions.
24 Thank you.

25 THE COURT: You can take your seat

1 Proceedings

2 with the other potential jurors.

3 Is that a biography of Winston

4 Churchill?

5 PROSPECTIVE JUROR: No.

6 THE COURT: I saw it upside down.

7 All right. Thank you.

8 (Whereupon prospective juror

9 leaving.)

10 (Whereupon prospective juror

11 entering.)

12 THE COURT: Mr. Porciello, you have

13 been very patient. Thank you very much, once

14 again. Thank you for your service in uniform.

15 Once again, it can't be done.

16 I always ask the last question first

17 before we get to the specific questions. The

18 ultimate question being, based upon what you

19 have heard so far from my brief description, do

20 you feel comfortable in being able to promise

21 both sides that you can be a fair and impartial

22 juror for me, both to the People and to the

23 defendant?

24 PROSPECTIVE JUROR: I believe so.

25 THE COURT: All right. When you say

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I believe so, I think you are a modest man but
do you feel comfortable giving me your word?

PROSPECTIVE JUROR: Yes.

THE COURT: You had a yes answer to
one or more of my questions or anything else you
wish to discuss?

PROSPECTIVE JUROR: Yes. Myself, my
wife were victims of credit card theft years
ago. In those days it was a carbon copy behind
the credit card. We believe a store employee
took the credit card number and charged a number
of items. However, the credit card company
dismissed the charges because we were never in
those locales.

THE COURT: So you never had to pay
for them actually?

PROSPECTIVE JUROR: No.

Subsequently, my son -- excuse me,
subsequently my son was also a victim.
Actually, his credit card was stolen from the
gym about six months ago.

THE COURT: Do you feel-- the
people -- first, we will talk about your
incident with you and your wife. About twenty

1 Proceedings

2 years ago?

3 PROSPECTIVE JUROR: A little over.

4 THE COURT: I was going to say the
5 carbons kind of went out about that period of
6 time.

7 Do you feel that -- first of all, was
8 anybody apprehended, when you say were not
9 charged?

10 PROSPECTIVE JUROR: We never pursued
11 it. In those days, you recall, you would call
12 the credit card company and immediately stopped
13 the credit card from being valid. And then
14 subsequently we found out not to long after
15 that, that the charges, we were not responsible
16 for the charges. So we never pursued anything.

17 THE COURT: How about what happened
18 with your son? Was anyone ever apprehended in
19 connection with that?

20 PROSPECTIVE JUROR: I don't believe
21 so. I think it was the same scenario. He
22 called the credit card company and they
23 dismissed the charges.

24 THE COURT: Let me ask, where did
25 this take place as far as your son's gym?

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PROSPECTIVE JUROR: My son, it was in Northport, I believe it was a Golds Gym.

THE COURT: If chosen as a juror in this case, you would have to decide this case only on the facts presented at this trial.

PROSPECTIVE JUROR: I understand.

THE COURT: You wouldn't be able to let what happened to you or your family effect your judgment in order to make sure that the People and Mr. Whitehead receive a fair trial.

Mr. Whitehead is accused of, among other things, credit card identity thefts in connection with that kind of information. If there is that kind of -- if you start hearing similar information during the course of the trial, that is my only concern, you would find it difficult to avoid letting that color your judgment.

You understand my concerns.

PROSPECTIVE JUROR: I understand, Your Honor and --

THE COURT: Your word is good enough for me, please.

PROSPECTIVE JUROR: Okay.

1 Proceedings

2 THE COURT: So it is just, I leave it
3 up to you as far as what do you think?

4 PROSPECTIVE JUROR: For me to sit
5 here in front of everyone, personally, I would
6 say that it would be impossible to dismiss the
7 past knowing what I know. However, I believe I
8 could keep an open mind.

9 THE COURT: See, that is the key and
10 you kind of, you hit the heart of it. Common
11 sense comes from our experience. It is a
12 question of whether or not it will burden our
13 present judgment. That is the question.

14 Do you feel it would be a burden to
15 you or you feel you would be able to set it
16 aside and say that is what happened to me but I
17 will consider the evidence as to Mr. Whitehead,
18 what is presented here in court, you won't
19 speculate or use what happened with your son or
20 yourself?

21 PROSPECTIVE JUROR: I believe with
22 your instructions I would say, I would be as
23 honest as I can be. I can not dismiss the fact
24 that this occurred in my life.

25 THE COURT: All right.

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Proceedings

Anything else you would like to
discuss privately?

PROSPECTIVE JUROR: Um--

THE COURT: Or was that it?

PROSPECTIVE JUROR: I told you that I
have a relative who was also a court judge in
Suffolk County.

THE COURT: In Suffolk County; who is
your relative?

PROSPECTIVE JUROR: Um -- I always
forget. Laurie and Glen Murphy. Glen Murphy.

THE COURT: Glen Murphy, sure.

MR. KEAHON: District Court Judge.

THE COURT: Do you ever discuss the
law with Judge Murphy?

PROSPECTIVE JUROR: Social, no cases,
lets put it that way.

THE COURT: Now on a personal, could
you promise not to hold me up to Judge Murphy's
standards?

PROSPECTIVE JUROR: I have never been
in his court so I don't know.

THE COURT: Good. I can take that as
a yes. If for no other reason, by default.